

Montana Water Court
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FILED
08/07/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
43B-0679-R-2022
Lambert, Kathryn
11.00

MONTANA WATER COURT, YELLOWSTONE DIVISION
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN
BASIN 43B
PRELIMINARY DECREE

CLAIMANTS: ~~Fred C. II Pierce; Judy A. Pierce~~; Lisa M. McNaney;
Tom M. McNaney

OBJECTORS: United States of America (USDA Forest Service)

CASE 43B-0679-R-2022

43B 188045-00

43B 188047-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

The United States of America (USDA Forest Service) ["USA"] objected to Fred C. Pierce, II, and Judy A. Pierce claims 43B 188045-00 and 43B 188047-00.

The January 30, 2023 Order Setting Filing Deadline states:

Jean Pierce, successor of Fred C. Pierce, II, and Judy A. Pierce, has informed the Court and counsel for the United States of America (USDA Forest Service) that the land to which these water right claims pertain was sold by her husband Fred C. Pierce, II, years ago and the family has no ownership interest in these two water right claims. It *appears* the land associated with claim 43B 188045-00 may now be owned by Thomas M. McNaney and Lisa Morgan. It *appears* the land associated with claim 43B 188047-00 may now be owned by Eagle Vision Ministries Inc.

The Order set a March 15, 2023 deadline for filing ownership updates and was sent to Thomas M. McNaney, Lisa Morgan, and Eagle Vision Ministries Inc.

On February 10, 2023 the ownership of claim 43B 188045-00 was updated to Lisa M. McNaney and Tom M. McNaney. On February 17, 2023 the McNaneys filed a Verified Motion To Amend Water Right Claim to correct the point of diversion and place of use legal descriptions. On June 12, 2023 the McNaneys and the USA filed a Stipulation To Resolve Objections.

For claim 43B 188047-00, no ownership update was filed. On June 12, 2023 the United States' Motion To Resolve Objection was filed ["Motion"]. As Fred C. Pierce, II, and Judy A. Pierce are deceased and no current owner has been identified, no response to the Motion was filed.

These documents are viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

FINDINGS OF FACT

1. For claim 43B 188045-00, the Preliminary Decree states that the point of diversion

and place of use legal description is SENWSE section 36, T2S, R15E, SWEET GRASS. The legal description should be the SENWNE section 36, T2S, R15E, SWEET GRASS. As requested, the following clarification remark should be added to the abstract: THE POINT OF DIVERSION AND PLACE OF USE ARE LOCATED ENTIRELY ON PRIVATE LANDS.

2. For claim 43B 188047-00, Fred C. Pierce, II, and Judy A. Pierce, both deceased, should be removed as owners. The following remark should be added to the issue remark box:

NOTICE: IF NO OWNERSHIP UPDATE IS FILED TO IDENTIFY THE OWNER(S) OF THIS CLAIMED RIGHT BEFORE ISSUANCE OF THE FINAL DECREE, THIS CLAIM WILL BE DISMISSED AND WILL NOT APPEAR IN THE FINAL DECREE.

The Motion states:

The United States objected to the claim because the legal land descriptions for the point of diversion and place of use are described in a manner that may be interpreted as including federal land. However, there is no way refine the legal land description to address this concern because the private parcel has irregular boundaries.

The Motion then requests the addition of the following clarification remark to the abstract:

THE POINT OF DIVERSION AND PLACE OF USE ARE LOCATED ENTIRELY ON PRIVATE LAND.

The Motion should be granted and the remark should be added to the abstract of this claim.

CONCLUSION OF LAW

The Stipulation and the Motion are sufficient to contradict and overcome the prima facie claims.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court grant the Motion and make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim for each claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

Service via USPS Mail:

Thomas M. McNaney
Lisa M. McNaney
108 Camellia Way
Laurel Park, NC 28739-9306

Last Order:

Fred C II Pierce
Deceased
Judy A. Pierce
Deceased
1008 Poly Dr Apt A1
Billings, MT 59102

Service via Email:

Romney S. Philpott, Trial Attorney
US Department of Justice
ENRD, Natural Resources Section
999 18th Street, South Terrace Suite 370
Denver, CO 80202
(303) 844-1810
romney.philpott@usdoj.gov
Montanabasins.enrd@usdoj.gov

Note: Caption and Service List Updated 7-28-23

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 188045-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: LISA M MCNANEY
108 CAMELLIA WAY
LAUREL PARK, NC 28739 9306

TOM M MCNANEY
108 CAMELLIA WAY
LAUREL PARK, NC 28739 9306

Priority Date: JANUARY 1, 1910

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: SPRING, UNNAMED TRIBUTARY OF DERBY GULCH

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SEWNNE	36	2S	15E	SWEET GRASS

Period of Diversion: FEBRUARY 1 TO NOVEMBER 1

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: FEBRUARY 1 TO NOVEMBER 1

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SEWNNE	36	2S	15E	SWEET GRASS

Remarks:

THE POINT OF DIVERSION AND PLACE OF USE ARE LOCATED ENTIRELY ON PRIVATE LANDS.

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 188047-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: *** NO ACTIVE OWNER EXISTS ON THIS WATER RIGHT ***

Priority Date: JANUARY 1, 1910

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: SPRING, UNNAMED TRIBUTARY OF WEST BRIDGER CREEK

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENESW	25	2S	15E	SWEET GRASS

Period of Diversion: FEBRUARY 1 TO NOVEMBER 1

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: FEBRUARY 1 TO NOVEMBER 1

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NENESW	25	2S	15E	SWEET GRASS

Remarks:

THE POINT OF DIVERSION AND PLACE OF USE ARE LOCATED ENTIRELY ON PRIVATE LAND.

THE FOLLOWING POTENTIAL ISSUES WERE IDENTIFIED DURING CLAIMS EXAMINATION OR DURING PREVIOUS WATER COURT PROCEEDINGS.

NOTICE: IF NO OWNERSHIP UPDATE IS FILED TO IDENTIFY THE OWNER(S) OF THIS CLAIMED RIGHT BEFORE ISSUANCE OF THE FINAL DECREE, THIS CLAIM WILL BE TERMINATED AND WILL NOT APPEAR IN THE FINAL DECREE.